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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/009,837	01/20/1998	RANDELL L. MILLS	9113-23US	7937

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EXAMINER

KALAFUT, STEPHEN J

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 12/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

C

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/009,837

Applicant(s)

MILLS, RANDELL L.

Examiner

Stephen J. Kalafut

Art Unit

1745

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 07 November 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See body of action.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Applicant's arguments filed 07 November 2006 have been fully considered but they are not persuasive.

Applicant argues (page 1) that he has submitted with his response “new, non-cumulative scientific evidence” in support of his theory. Applicant has submitted no new evidence since the Final Rejection of 08 May 2006.

Applicant faults consultary examiner Dr. Bernard Souw (page 2) for drafting “numerous lengthy appendices totaling hundreds of pages”. Applicant himself has made responses and appendices that total over one hundred pages each. Applicant alleges that the “Secret Committee” has dismissed his evidence (pages 22-23), yet faults what he considers “erroneous arguments” in the Appendices of consultary examiner Dr. Souw (page 23), which themselves are a consideration of evidence submitted by applicant.

Applicant repeats his previous argument (pages 23-24) that the “Committee” has nitpicked on “theoretical grounds” and not found any “true fault with any of the data on legitimate scientific grounds”, which falsely assumes that theoretical grounds and scientific grounds are somehow mutually exclusive. The previous Appendices have given both theoretical and experimental reasons for finding fault with applicant's data. For example, the Appendix to paper no. 20050207 is divided into “Experimental” and “Theoretical” parts.

Applicant argues (page 25) that “the level of support (or acceptance) in the scientific community, not the proper standard for ascertaining whether an applicant has satisfied the enablement or utility requirements of Sections 112 and 101”. The level of support in scientific community is not alleged to be a standard under §101 and §112 *per se*, but merely a reason why the examiner does not consider applicant to have met the standards of these sections, such as

Art Unit: 1745

enabling an ordinarily skilled artisan to make and use the invention. A disclosure is evaluated for what it teaches to those skilled in the art, such skill evaluated in light of the scientific knowledge pertinent to that art. The opinions of the scientific community form part of this background knowledge.

Once again applicant faults the “Committee” for relying on Krieg (pages 28-29), doing so because the “Committee” was “feeling the pressure to back up its claims”. Krieg was not cited because of any “pressure”, but to address a specific argument raised by applicant, that the “Committee” has failed to find any physical law the applicant has violated. Krieg makes four basic points. First, Krieg states that total energy, identified by the variable “E”, is the sum of kinetic and potential energy. Second, he uses the laws of electricity and magnetism to establish the potential energy of the proton-electron system. Third, he used the uncertainty principle to get an order of magnitude estimate for the momentum of an electron for a given orbit, which orbit is identified by its radius as “r”. Fourth, he used calculus find the minimum value of “r” by taking the derivative of “E” and setting it equal to zero. Nowhere in applicant’s arguments about Krieg are any of these points disputed.

Applicant argues (page 30) that in the Appendix to the Office action of 24 August 2004, in Serial No. 08/467,051, Dr. Souw stated that “[t]he PTO’s view is not at all that the existence of lower-energy hydrogen were [sic] impossible”, which would mean that “lower energy states cannot be in violation of any physical law”, and that the “Committee” has taken a contrary position, taking the “ground state of an electron of a hydrogen atom” to be a physical law that applicant has violated. This statement concerning the position of the “Committee” would contradict applicant’s assertion (page 24), that the “Committee” has failed to identify any laws

Art Unit: 1745

that have been violated. However, in stating Dr. Souw's position, applicant omits part of Dr. Souw's statement, where he states that "(a) Applicant's invention is not supported by any experimental fact or evidence, and (b) the underlying theory (i.e., GUT/CQM) fails to support the invention, because it contains too many flaws", the theory that Dr. Souw refers alleging the existence of lower-energy hydrogen. Since the theory behind lower-energy hydrogen is flawed (according to Dr. Souw), their existence is not supported, and the physical law concerning the "ground state" of hydrogen atoms remains accepted by the examiner.

Applicant argues (pages 39-40) that an "*APS News Online Bulletin*, dated August/September 2002, suggests that Dr. [Robert] Park is maintaining his questionable PTO contacts, apparently with the agency's blessing", thus having knowledge of Patent applications filed during 2002, and not merely of applicant's applications at various times during the year 2000, and further states that the subject matter of such applications "is supposedly kept confidential". This ignores the fact the Office has been publishing Patent applications under the Pre-Grant Publications program, as early as July 2001, over a year before the date of the above-mentioned *APS News Online Bulletin*. As before, instead of a "Deep Throat" or other improper contact, the *Bulletin* was based on information that was publicly available.

Applicant argues (page 130) that a previous statement by the "Committee", that diamonds "are a form of carbon, and thus not in competition with hydrogen" demonstrates its "refusal to take the conflict issue seriously". This is not so. The examiner was merely pointing out the differences between applicant claims to be his invention and the subject matter that applicant alleges to be in competition therewith.

Art Unit: 1745

Applicant argues (pages 140, 141 and 152) that Dr. Souw has relied on a fraud made by Dr. Andreas Rathke, where Dr. Rathke changes mathematical signs in applicant's equations (1) and (9). Since the articles which Dr. Rathke cites (nos. 24 and 25, on page 8 of his article) are not of record, whether Dr. Rathke has done what applicant alleges cannot be determined. However, it is noted that equation (1), on page 2 of the Rathke article appears identical to Equation (2) in applicant's attachment 58, except that applicant uses the coordinates "r", "theta" and "phi" within the parentheses, along with "t", whereas Rathke uses only "x" and "t". No signs, such as plus or minus, appear to have been changed.

Applicant argues (page 154) that the "Committee" is incorrect setting the variable "p" equal to zero. This was done to give applicant's theory a "benefit of the doubt", to increase the number of possible values for the resulting value of "q". If this is improper, then the possible values of "q" would exclude 4, and any detected value of 4 would be inconsistent with applicant's theory.

Applicant argues (page 155) that the examiner's calculations have not taken into account energy being transferred from a hydrogen atom to a catalyst. The calculations first establish the possible energy levels that an alleged hydrino may exhibit, and then differences between those levels, expressed as "q". Only at amounts corresponding to these differences, may the atom give off energy. To transfer part of the difference to a catalyst and emit the rest as a photon, there would have to be intermediate values of "q" between the two levels that the alleged hydrino would be changing between.

Applicant argues (page 153) that the "Committee" provides no support for concluding, in "the pending Action", that attachment 88, 105, 108-110, 113 and 114 speculate hydrino

Art Unit: 1745


formation as an explanation for data not necessarily caused thereby. The Appendix to paper no. 20050207, on pages 6-12 thereof, offers several different explanations alternative explanations for the Balmer line broadening observed by applicant, and thus support for the conclusion of the "Committee".

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjk


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